

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

MICHAEL DRAWBAUGH,

Petitioner,

v.

SECRETARY OF D.O.C., *et al.*,

Respondents.

NO. 3:10-CV-1929

(JUDGE CAPUTO)

**FILED
SCRANTON**

JUN 26 2018

ORDER

PER KTC
DEPUTY CLERK

NOW, this 26th day of June, 2018, **IT IS HEREBY ORDERED** that:

- (1) Petitioner's Motion pursuant to Federal Rule of Civil Procedure 60(b)(6) (Doc. 83) is **DENIED**¹ and a Certificate of Appealability **SHALL NOT ISSUE**.
- (2) Petitioner's Motion to Appoint Counsel (Doc. 82) is **DENIED**.

A. Richard Caputo
A. Richard Caputo
United States District Judge

¹ Petitioner contends that the Supreme Court's decision in *McQuiggin v. Perkins*, 569 U.S. 383, 133 S. Ct. 1924, 185 L. Ed. 2d 1019 (2013) constitutes an extraordinary circumstance which entitles him to relief under Rule 60(b)(6). *Cf. Satterfield v. District Attorney of Phila.*, 872 F.3d 152, 164-65 (3d Cir. 2017) (vacating the order of the district court denying the petitioner's Rule 60(b)(6) motion and remanding for "reconsideration of whether the change of law wrought by *McQuiggin*, combined with other circumstances of the case, merits relief under Rule 60(b)(6)."). Petitioner's claim fails, however, because a "motion under Rule 60(b) must be made within a reasonable time." Fed. R. Civ. P. 60(c)(1). *McQuiggin* was decided by the Supreme Court on May 28, 2013, but Petitioner did not file his Rule 60(b)(6) motion until May 10, 2018. This is not a reasonable time. *See, e.g., Tamayo v. Stephens*, 740 F.3d 986, 991 (5th Cir. 2014) (Rule 60(b) motion filed eight (8) months after *McQuiggin* and two days before the petitioner's scheduled execution was not filed in a reasonable time); *Brooks v. Zimmerman*, No. 88-1427, 2018 WL 2090749, at *4 n.4 (W.D. Pa. Apr. 18, 2018) ("we find the nearly 5-year delay between the date *McQuiggin* was decided and the date Petitioner filed the instant Purported Rule 60(b) Motion to constitute an unreasonable delay"), *adopted by*, 2018 WL 2088008 (W.D. Pa. May 4, 2018); *Howard v. Vaughn*, No. 97-3144, 2016 WL 3405465, at *5 (E.D. Pa. June 21, 2016).